

## **The complaint**

Mr R complained because Capital One (Europe) plc refused to refund him for two transactions had said he hadn't authorised.

## **What happened**

On 30 June 2024, there were two transactions on Mr R's Capital One credit card. One was for £105 and the other for £140. They were both to the same merchant.

On 15 July, Mr R rang Capital One, to report the two transactions as fraudulent. The adviser asked if he had his card, and Mr R said no, it looked as if it was lost. Capital One asked a number of questions, and Mr R confirmed that no-one else had access to the card. He said he must have lost it after a supermarket transaction on 24 June. Capital One cancelled the card and issued a replacement, and gave him a temporary credit while it investigated.

On 19 July, Capital One emailed Mr R and said that it couldn't accept his fraud claim. Mr R didn't agree and complained.

In Capital One's final response letter on 27 August, it repeated what it had told him on 19 July. It explained that when a fraudster steals a card, usually there would be more transactions. Also, fraudsters tend to buy products with good resale value, which wasn't the case here. Capital One also said that it could see that Mr R had logged into his mobile app before reporting the fraud – but when he did so, he hadn't blocked the card or got in touch to dispute the transactions.

Mr R wasn't satisfied and contacted this service.

Mr R told our investigator that around the time of the transactions, he'd had a text from Capital One saying he was near his credit limit, so he'd logged on and paid off £200. He said he hadn't looked at the transactions and had been on a train at the time. The investigator also asked Mr R why he'd delayed until 15 July before reporting the 30 June transactions. Mr R said he didn't notice the transactions as he didn't normally use the account and had other credit cards.

Our investigator also asked Mr R about a payment he'd made using his credit card on 2 July, two days after the disputed transactions. Mr R said yes, he'd made that payment. The investigator asked him more because Mr R had said he'd lost his card around 24 June. Mr R replied that he'd made the payment using a photograph of the card details on his mobile phone. He didn't give an explanation about why he hadn't reported his card lost before that.

The investigator also noted that Mr R had logged on to his Capital One app on 2, 9 and 12 July, but hadn't disputed the transactions until 15 July. The investigator thought Mr R would have noticed the transactions on at least one of the times he'd logged on. And the IP address (a unique computer identifier) used for the transactions matched that used previously by Mr R. Finally, the investigator noted that the entertainment business to which the payment had been made had had an event which took place between 11 and 14 July. So

the investigator commented that Mr R hadn't raised the dispute until after that event had finished.

So the investigator didn't uphold Mr R's complaint.

Mr R wasn't satisfied. He commented that because of a medical condition, he couldn't have attended the event mentioned. The investigator replied that although Mr R had said he hadn't attended the event, he'd relied on other evidence too. Mr R asked for an ombudsman's decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

#### *What the Regulations say*

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. So what decides the outcome here is whether it's more likely than not that Mr R, or a third party fraudster unknown to him, carried out the disputed transactions.

#### *Who is most likely to have made the disputed transactions?*

Mr R wasn't clear about when he'd lost his credit card, or in what circumstances. He told Capital One that he must have lost it after a supermarket transaction on 24 June.

There are several things about this that seem unlikely. First, if a thief had obtained Mr R's card on 24 June, it's likely they'd have used it before the two disputed transactions on 30 June. Fraudsters tend to try to take as much as they can, as quickly as they can.

And here, apart from the two disputed transactions for £105 and £140 on 30 June, there were no further disputed transactions. This is despite the fact that it was 15 July before Mr R reported the disputed transactions, and in the course of that he mentioned that he'd lost his card, so the card was blocked at that point.

So, if fraudsters had obtained Mr R's card on 24 June, they'd used it just for two relatively small transactions on 30 June and then not again, even though it wasn't blocked until 15 July. I find this very unlikely.

I'm also not persuaded by what Mr R told our investigator about making a genuine payment on 2 July by using a photograph of his card which he'd lost on 24 June. I think that if Mr R had lost his card on 24 June, he'd be likely to have reported it much sooner than he did – and certainly by the time he made a payment which he said he did by an elaborate other method on 2 July.

I've also seen the evidence showing that Mr R logged on on 2, 9 and 12 July. I'm not persuaded that he could have done so without noticing the disputed transactions – but he didn't report them at any of those points.

Taking all these factors into account, I find that it's more likely than not that Mr R himself carried out the disputed transactions. So Capital One doesn't have to refund him.

**My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 7 February 2025.

Belinda Knight  
**Ombudsman**